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Jill R. Clarke
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PATENT

Attorney Docket No. 281-329.02

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12-18

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re the application of:

Art Unit: 2873

Ervin Goldfain, *et al.*

Examiner: Not Yet Assigned

Application No.: 09/862,636

Filing Date: May 22, 2001

COMMUNICATION

For: EYE VIEWING DEVICE COMPRISING
EYEPIECE AND VIDEO CAPTURE OPTICS

Assistant Commissioner for Patents
Washington, DC 20231

Sir:

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REMARKS

Applicants' attorney, George Blasiak recently requested a status update as to the status of the petition filed in the present application, November 2, 2001.

As of November 20, 2002, Applicants had not received a decision from the Board of Petitions regarding the November 2, 2001 petition.

However, in a conference held November 14, 2002, applicants' attorney George Blasiak discussed the facts of the November 2, 2001 petition with Examiner Frances Hicks of the Board of Petitions.

Examiner Hicks stated that the Board of Petitions, given the applicable facts, would likely dismiss the petition filed on November 2, 2001, as being "inappropriate" when it receives the November 2, 2001 petition and acts upon it.

Examiner Hicks stated that the reason that the November 2, 2001 petition would be considered "inappropriate" is that abandonment is a stipulated penalty under 37 CFR 1.213(c), only in the instance that an applicant "subsequently" files a foreign application after filing a U.S. application.

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In the present application, a PCT application corresponding to the present application was filed on the same day as the present application. According to Examiner Hicks, the PCT application was therefore not filed "subsequently" relative to the present application. Because the abandonment penalty stipulated under 37 CFR 1.213(c) is not applicable to the present application, and the present application has not gone abandoned under 37 CFR 1.213(c), revival of the present application under 1.137 (f) would likely be considered "inappropriate" in view of the Board of Petitions.

Respectfully submitted,

WALL MARJAMA & BILINSKI, LLP



Date: November 20, 2002

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